

CLAIMS

**§ 4.250 Filing and proof of creditor claims; limitations.**

(a) All claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under § 4.211(c) shall be filed with either the Superintendent or the administrative law judge prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred.

(b) The claims of non-Indians shall be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims shall show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim shall be supplemented by an affidavit, in triplicate, of the claimant or someone in his behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(c) Claims of individual Indians against the estate of a deceased Indian may be presented in the manner set forth in paragraph (b) of this section or by oral evidence at the hearing where the claimant shall be subject to examination under oath relative thereto.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an administrative law judge's interim order.

(g) Claims of a State or any of its political subdivisions on account of social

security or old-age assistance payments shall not be allowed.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971]

**§ 4.251 Priority of claims.**

After allowance of the costs of administration, claims shall be allowed:

(a) Priority in payment shall be allowed in the following order except as otherwise provided in paragraph (b) of this section:

(1) Claims for expenses for last illness not in excess of \$500, and for funeral expenses not in excess of \$500;

(2) Claims of unsecured indebtedness to the United States or any of its agencies;

(3) Claims of unsecured indebtedness to a Tribe or to any of its subsidiary organizations;

(4) Claims of general creditors, including that portion of expenses of last illness not previously authorized in excess of \$500 and that portion of funeral charges not previously authorized in excess of \$500.

(b) The preference of claims may be deferred, in the discretion of the administrative law judge, in making adjustments or compromises beneficial to the estate.

(c) No claims of general creditors shall be allowed if the value of the estate is \$2,500 or less and the decedent is survived by a spouse or by one or more minor children. In no event shall claims be allowed in an aggregate amount which is in excess of the valuation of the estate; the general creditors' claims may be prorated or disallowed entirely, and the preferred claims may be prorated subject to the limitations contained in paragraph (d) of this section.

(d) If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

(e) In the event that it is determined that a part or portion of the estate is to lose its trust character pursuant to

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findings made under § 4.206, then the administrative law judge may in his discretion prorate all claims and reduce the allowance thereof on a ratio comparable with that existing between the total value of the estate and the value of that portion which is to lose its trust character.

[36 FR 7186, Apr. 15, 1971, as amended at 51 FR 35219, Oct. 2, 1986]

### § 4.252 Property subject to claims.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

## WILLS

### § 4.260 Making; review as to form; revocation.

(a) An Indian of the age of 18 years or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses.

(b) When an Indian executes a will and submits the same to the Superintendent of the Agency, the Superintendent shall forward it to the Office of the Solicitor for examination as to adequacy of form, and for submission by the Office of the Solicitor to the Superintendent of any appropriate comments. The will or codicil or any replacement or copy thereof may be retained by the Superintendent at the request of the testator or testatrix for safekeeping. A will shall be held in absolute confidence, and no person other than the testator shall admit its existence or divulge its contents prior to the death of the testator.

(c) The testator may, at any time during his lifetime, revoke his will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it.

No will that is subject to the regulations of this subpart shall be deemed to be revoked by operation of the law of any State.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 21284, Nov. 5, 1971; 36 FR 24813, Dec. 23, 1971; 53 FR 48648, Dec. 2, 1988]

### § 4.261 Anti-lapse provisions.

When an Indian testator devises or bequeaths trust property to any of his grandparents or to the lineal descendant of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood.

[54 FR 8329, Feb. 28, 1989]

### § 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, shall take directly or indirectly any devise or legacy under deceased's will. All right, title, and interest existing in such a situation shall vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

## CUSTODY AND DISTRIBUTION OF ESTATES

### § 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all trust personal property of a deceased Indian and he may take such action, including sale thereof, as in his judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in § 4.240, § 4.241, or § 4.312 or decisions in the settlement of the estate as provided for in § 4.271. All expenses, including expenses of roundup, branding, care, and feeding of livestock, shall be a proper charge against the estate and may be paid by the Superintendent from those funds of